



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 25, 2003

Ms. Nancy Nelson
Associate Vice President
Employee Relations
El Paso Community College
P.O. Box 20500
El Paso, Texas 79998-0500

OR2003-2794

Dear Ms. Nelson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 180251.

The El Paso County Community College District (the "College") received a request for information concerning an incident that occurred on June 26, 2002 at the Mission Del Paso campus. You assert the requested information is excepted from disclosure under section 552.108 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

Initially, we note a document in the submitted information indicates it is information contained in a public court record. See Gov't Code § 522.022(a)(17) (providing that information contained in a public court record is public information); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992) (sexual assault victim's privacy right not violated by release of information in public court document). Therefore, as prescribed by section 552.022 of the Government Code, the College must release this public court record to the requestor, unless it is confidential under other law. Section 552.108, a discretionary exception under the Act, does not constitute "other law" that makes information confidential. See Open Records Decision No. 586 (1991) (governmental body may waive section 552.108); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary

exceptions generally). Accordingly, the College must release the document we have marked under subsection 552.022(a)(17) of the Government Code.

Next, we note the applicability of section 552.101 of the Government Code to the remainder of the submitted information. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses the doctrine of common-law privacy. For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information when (1) it contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Indus. Found.*, 540 S.W.2d at 683. In Open Records Decision No. 393 (1983), this office concluded, generally, only that information which either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common-law privacy, but because the identifying information was inextricably intertwined with other releasable information, the governmental body was required to withhold the entire report. Open Records Decision No. 393 at 2 (1983); *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). In this instance, the incident involves an allegation of attempted sexual assault and the requestor knows the identity of the victim. Withholding only identifying information from the requestor where the requestor knows the victim's identity would not preserve the victim's common-law right to privacy. Therefore, we conclude the College must withhold the remainder of the submitted information under section 552.101 and common-law privacy.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

¹ As section 552.101 is dispositive, we need not address your claimed exception.

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Christen Sorrell". The signature is written in a cursive, flowing style.

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 180251

Enc: Submitted documents

c: Mr. Antonio Ayub
2304 Alan Duncan Lane
El Paso, Texas 79936
(w/o enclosures)